



STATE OF INDIANA

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March 4, 2010

Mr. Tom DeArk
P.O. Box 2060
Clarksville, IN 47131

*Re: Informal Inquiry 10-INF-1; Denial of Access to Public Records by the
Town of Clarksville Redevelopment Commission*

Dear Mr. DeArk:

This is in response to your informal inquiry regarding the Town of Clarksville's Redevelopment Commission and the Redevelopment Director's ("Director") actions in responding to your verbal request to inspect the documents referenced in a notice of public hearing. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Indiana Public Access Records Act ("APRA"), I.C. § 5-14-1 *et seq.*

BACKGROUND

You raise four issues with respect to the APRA. I restate and summarize your questions as follows:

1. Whether the Director's act of sending you to a different public agency to seek a document that was not requested constitute a timely response to your response;
2. Whether the Director's act of denying your request violated the APRA;
3. Whether the Director's denial was an appropriate denial to your request; and
4. Whether the public notice by the Commission complied with the statutory requirements.

According to your inquiry, the Commission advertised a public hearing for December 7, 2009 regarding the town's economic development plan. The notice stated that certain documents could be inspected at the Redevelopment Department. You went to the Redevelopment Department and made a verbal request to the Director to inspect

documents in reference to the public hearing notice. At that time, the Director stated that the agency did not have the documents and referred you to another agency.

You allege that the Director denied your request to inspect documents on December 4, 2009, in spite of the notice of the public hearing, which indicated you would be able to do so. You also allege that the Director failed to comply with the APRA when only response was to tell you to go to another public agency in search of the requested documents that were advertised to be available at the Redevelopment Department.

ANALYSIS

It is the public policy of the APRA that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. I.C. § 5-14-3-1. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information. I.C. § 5-14-3-1.

The first question you asked is whether the Director responded appropriately and within a reasonable time under the APRA. Under the APRA, if a request is made orally, either in person or by telephone, a public agency may deny the request orally. I.C. § 5-14-3-9(c). If a requestor is physically present in the office of the public agency or makes a request by telephone or requests enhanced access to a document, the public agency must respond to the request within 24 hours after any employee of the agency receives the request. I.C. § 5-14-3-9(A)(2). An example in the Public Access Counselor's *Handbook on Indiana's Public Access Laws* states the public agency's responsibilities when a request is submitted orally:

Example: A person appears at the county auditor's office and asks to inspect the minutes of the council's last ten meetings. The auditor need not produce the records on demand but must respond to the request within 24 business hours, which is the same time the next business day.

Handbook on Indiana's Public Access Laws at 25.

Second, the Director's act of telling you to go to another public agency in search of the requested documents was acceptable according to the guidelines of the APRA. The public access counselor has opined that it is appropriate for the public agency to refer a requestor to another public agency if that agency does not have the requested records. The public access counselor has also stated that public agencies do not have to produce records which they do not possess. Thus, under APRA, the Director's denial was appropriate.

Finally, in response to your question regarding whether the public notice advertised by the Commission complied with statutory requirements, notices are required by the Open Door Law (“ODL”) I.C. § 5-14-1.5-5; and not the APRA. You alleged that the notice was defective because the documents advertised in the notice were not available. However, nothing in either the APRA or the ODL requires a public agency to post public notice regarding the availability of public records. Moreover, in this case, the notice appears to have met the requirements of the ODL. The ODL requires public notice of date, time, and place of any scheduled meetings, executive sessions, or any rescheduled or reconvened meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays, and legal holidays. *Id.* Although the notice stated that you could obtain these documents at the public agency advertised and as a result, the documents were not available when requested, the notice is not deficient under the ODL for that reason alone.

CONCLUSION

For the foregoing reasons, it is my opinion that the Director did not violate the APRA by referring you to another public agency because the Redevelopment Department did not have the documents which you requested. The mere act of sending a requestor to another public agency to request documents that were not possessed by the public agency subject to the request does not constitute a violation of the APRA.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor